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SENATE BILL 291

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO TORTS; CREATING THE RIGHT TO EAT ENCHILADAS ACT;
ELIMINATING CIVIL LIABILITY FOR HEALTH CONDITIONS CAUSED BY THE
LONG-TERM CONSUMPTION OF FOOD; PROVIDING EXCEPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Right to Eat Enchiladas Act".

Section 2. PURPOSE OF ACT. -- The purpose of the Right to
Eat Enchiladas Act is to prevent frivolous lawsuits against
manufacturers, packers, distributors, carriers, holders,
sellers, marketers or advertisers of food that comply with
applicable statutory and regulatory requirements.

Section 3. PREVENTION OF FRIVOLOUS LAWSUITS. -- Except as
provided in Section 4 of the Right to Eat Enchiladas Act, a
manufacturer, packer, distributor, carrier, holder, seller,

underscored material = new
[bracketed material] = delete

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[bracketed material] = delete

1 marketer or advertiser of food, as defined in the Federal Food,
2 Drug and Cosmetic Act, 21 U. S. C. A. 321(f), or an association of
3 one or more of these entities, shall not be subject to civil
4 liability under the laws of this state for any claim of injury
5 arising out of weight gain, obesity, a health condition
6 associated with weight gain or obesity or other generally known
7 condition allegedly caused by or likely to result from the
8 long-term consumption of food.

9 Section 4. LIABILITY NOT PRECLUDED. --The Right to Eat
10 Enchiladas Act does not preclude civil liability where the
11 claim of injury due to weight gain, obesity, health condition
12 associated with weight gain or obesity, or other generally
13 known condition allegedly caused by or likely to result from
14 the long-term consumption of food is based on adulteration or
15 misbranding of food in violation of state or federal law and
16 the claimed injury was proximately caused by that violation, or
17 is based on any other violation of state or federal law
18 applicable to the manufacturing, marketing, distribution,
19 advertising, labeling or sale of food, provided that the
20 violation is knowing and willful and the claimed injury was
21 proximately caused by the violation.

22 Section 5. PLEADING REQUIREMENTS. --In a cause of action
23 for a claim brought under Section 4 of the Right to Eat
24 Enchiladas Act, the complaint shall allege with particularity
25 the following elements that are deemed to be a part of the

1 substantive law of this state:

2 A. the state or federal law that was violated;

3 B. the facts that constitute a violation of the
4 state or federal law;

5 C. the facts demonstrating that the violation was
6 the proximate cause of the injury; and

7 D. when appropriate to the cause of action, facts
8 sufficient to support a reasonable inference that the violation
9 of law was knowing and willful.

10 Section 6. APPLICABILITY. --The provisions of this act
11 apply to all covered causes of action pending on the effective
12 date of this act and to all causes of action filed after the
13 effective date, regardless of when the cause of action arose.